



CITY OF KIRKLAND Request for Proposal

Kirkland Green Trip & Totem Lake Green Trip Programs Outreach/Marketing

JOB NO. 73-15-PW

PROJECT DESCRIPTION: The City of Kirkland is seeking proposals from qualified individuals or firms for the development of a marketing, outreach, and promotional plan and the implementation of that plan to promote the Kirkland Green Trip and Totem Lake Green Trip (TGT) program and thereby reduce drive-alone trips. The estimated cost of this project is \$40,000 to \$80,000. This program will be funded with Federal and local grant money.

TransManage (Downtown Bellevue Association) have provided successful outreach/marketing and program management for the programs in the past four years. The original contract has expired and a new open competitive process is required to select a consultant to continue the work. We are looking for a consultant with strong local transportation demand management experience, knowledge of Kirkland's TDM programs and structure and the RideshareOnline system.

NOTICE IS HEREBY GIVEN: The City of Kirkland will receive sealed proposals in the office of the Purchasing Agent, City Hall, 123 Fifth Avenue, Kirkland, Washington, by **3:00 p.m. on December 2, 2015.**

The complete RFP, including all submittal requirements, can be found on the City of Kirkland's website at www.kirklandwa.gov. Locate by clicking on "Business" at the top of the webpage and then "Request for Proposals" under "Doing Business with the City." Copies of the RFP may be downloaded directly from this site. Those who wish to automatically receive any addenda or a notice of cancellation should provide contact information by emailing Barry Scott, Purchasing Agent, at bscott@kirklandwa.gov. Those who do not provide contact information are solely responsible for monitoring the City's website for any addenda to the RFP or a notice of cancellation. This Request for Proposal may be canceled at the discretion of the Purchasing Agent.

No supplier may withdraw his proposal within 45 days after the actual date of the opening.

Small businesses and minority-owned businesses are specifically invited to submit proposals.

In the award of proposals, consideration shall be given to such matters as supplier integrity, record of past performance, financial and technical resources, local

experience, knowledge of the KGT and TGT programs and the RideshareOnline system and references. The consultant selected should be able to quickly continue outreach and management of the programs and be able to work closely with King County METRO and WSDOT as it relates to TDM programs relating to Kirkland. The City of Kirkland reserves the right to reject any and all proposals, to waive any informality in the proposal process, and to make the award to the lowest responsible supplier as determined by the City.

TENTATIVE SCHEDULE OF EVENTS:

RFP issued	November 16, 2015
Deadline for questions	November 24, 2015
Proposals due	December 2, 2015
Proposals evaluated	December 3–11, 2015

QUESTIONS REGARDING THIS RFP: ALL questions must be submitted in writing (Email will suffice) to the RFP coordinator. Questions and answers will be forwarded to all proposing suppliers who provide contact information. In order to make information available to all proposing suppliers, no questions will be entertained after November 24, 2015.

RFP COORDINATOR:

Thang Nguyen, Transportation Engineer
City of Kirkland
Phone: (425) 587-3869
Fax: (425) 587-3807
E-mail: tnguyen@kirklandwa.gov

DISTRIBUTION OF RFP DOCUMENT AND ADDENDA: This RFP can be downloaded directly from the City of Kirkland's website at www.kirklandwa.gov. Locate by clicking on "Business" at the top of the webpage and then "Request for Proposals" under "Doing Business with the City." Those who wish to automatically receive any addenda or a notice of cancellation should provide contact information by emailing Barry Scott, Purchasing Agent, at bscott@kirklandwa.gov. Those who choose not to submit contact information will be solely responsible for monitoring the City's website for any addenda or a notice of cancellation.

PROPOSAL PREPARATION: Firms submitting proposals shall be responsible for any and all costs and/or expenses associated with preparing such proposal.

SUBMISSION OF PROPOSALS: Proposals must be received by no later than **3:00 pm PST on December 2, 2015.**

Proposals may be submitted as an email attachment in PDF or MS Word format to:

purchasing@kirklandwa.gov

OR

As an alternative to submitting proposals by email, sealed proposals may be mailed or hand delivered to the City. Sealed proposals should contain an original and three (3) printed copies of the proposal.

Sealed proposals must be mailed or delivered to:

City of Kirkland
Attn: Barry Scott, Purchasing Agent
RFP No. 73-15--PW
123 5th Ave
Kirkland, WA 98033

It is the responsibility of the proposing firm to be sure the proposals are sent sufficiently ahead of time to be received **no later than 3:00 pm** on the due date. Proposals received after the deadline will not be considered for award of contract.

EVALUATION PROCEDURES: City of Kirkland staff will review the proposals. Based on the scores resulting from criteria outlined in the Selection Criteria scoring sheet and recommendations from the reviewers, the City intends to select the two most eligible firms by the end of the week of December 6, 2015. Firms that are selected as finalists during the initial review process may be contacted for additional information and clarification. After the finalist firms have completed and open questions have been resolved the review team will make their final selection. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal. The evaluators will consider how well the supplier's proposed solutions meet the needs of the City.

The City of Kirkland reserves the right to reject any or all proposals and to waive informalities or irregularities with respect thereto.

CONTRACT: The contract shall consist of the following documents: The Request for Proposals (RFP), the accepted proposal, the Professional Services Agreement with attachments (sample attached) executed with the City and any agreed upon written changes to any of the foregoing documents. The contract documents are complimentary and what is called for in any one document shall be binding as if called for by all.

COOPERATIVE PURCHASING: RCW 39.34 allows cooperative purchasing between public agencies (political subdivisions) in the State of Washington. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement with the City of Kirkland may purchase from City of Kirkland contracts, provided that the supplier agrees to such participation. The City of Kirkland does not accept any responsibility for purchase orders issued by other public agencies.

COMPLIANCE WITH LAWS: The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Contractor must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

The consultant and/or its contractors must not be on the Federal/State/City of Kirkland debarred list.

SCOPE OF WORK:

Project Description

This RFP is for continuing the management of a marketing, outreach, and promotion of the TDM plan and implementation of that plan to promote the Kirkland Green Trip (KGT) and Totem Lake Green Trip (TGT) programs and thereby reduce drive-alone trips. The consultant will promote and encourage the use of the RideshareOnline system to commuters (residents and employees within the project area) and help and train employers to develop and manage their own transportation management program through the use of the RideshareOnline tools and/or other methods. The consultant will market, outreach and promote trip reduction strategies to residents, employees and employers within the project area. The consultant will also manage a residential commute trip reduction program. The consultant will work with King County METRO and WSDOT on TDM projects that are part of the KGT and TGT programs. The consultant will continue to represent the City of Kirkland at the TDM steering committee, the CTR Coordination Committee as well as the East Team Partnership meetings.

The consultant will work with the City and its contractors to brand the KGT and TGT programs.

This project will begin in December, 2015 and conclude on or before December 31, 2017. However, the project may continue based on available funding beyond 2017.

Background

The City of Kirkland will implement a transportation program, Totem Lake Green Trip (TGT), for the Totem Lake GTEC with the goal of reducing commute trips and encouraging modes of commuting other than driving alone. Through the use of the RideshareOnline system, and tools developed by the City of Kirkland the TGT program will provide incentives to residents, employees, and employers to encourage the use of alternative commute options such as carpool, vanpool, transit and non-motorized transportation. The TGT program has expanded to the rest of Kirkland under a new branding, Kirkland Green Trip, with new programs and incentives. This RFP is for development of a marketing, outreach promotional plan for both programs as well as managing all aspects of the TDM program. Furthermore, we are looking for a consultant that have experiences and knowledge of local and federal grants that will help us create projects to secure grants to enhance the TDM program and make it sustainable.

Key Elements of the TDM Programs

The successful contractor will market and promote the TDM programs which consists of the following Key elements:

- **Reward Commute Calendar**

Currently there are various reward incentives in the programs. We are continuing to develop other incentives that is cost effective and sustainable that will be successful in recruiting drivers and employers to reduce trips. The core infrastructure for this program will be a commute calendar module, integrated within the commute management system, where commuters may log their alternate commute modes. In addition, the reward calendar is used by local employers to implement their own incentive programs for their employees. Determination of eligibility and purchase and distribution of rewards occurs both manually and electronically.

- **Incentive Prize Drawing**

There will be periodic and one-time prize drawings to encourage participants to maintain their alternative commuting habits. These incentives may occur in conjunction with other network promotions such as Bike to Work month, Wheel Options, etc.

- **Rideshare**

This program offers ride matching (standard, vanpool, dynamic and event ride matching) for residents and employees living and/or working within the project boundaries.

- **Commuter Assistance**

This program Offers commuter assistance and counseling to help commuters understand their alternative commute mode options and the various incentive programs available.

- **Employer Grant**

Employers are offered the opportunity to apply for grant funds to implement new or enhanced alternative commute incentive and subsidy programs. The concept for the incentives programs is that employers will design and implement a customized commute program within a set of specified commute incentive program parameters.

- **Bike Rack Grant**

To help encourage non-motorized travel, property owners and employers are offered the opportunity to apply for grant funds for the purchase of a bike rack(s) to be installed on their properties.

- **Environmental Marketing**

The program will emphasize time savings, money savings and convenience of using alternative modes by providing feedback to commuters, employers and partners. The marketing focus will detail the effects of the use of alternate commute modes have on the environment, mobility, and the sustainability of the community by displaying the total commute miles logged, pounds of CO2 avoided, cost of travel savings, and barrels of oil saved within the commute management system webpage.

- **Social Networking**

The program will use active social communications such as twitter, blog, facebook, etc. to promote alternative commute and allow communication/announcement among users and administrators.

More information on the TDM programs can be found at www.kirklandgreentrip.com . We continue to look for innovative ideas to enhance the TDM program.

Stakeholders and Roles

City of Kirkland

The City of Kirkland will serve as the lead agency for this project and will coordinate work between contractors working on the TDM project.

Local Employers

Local employers will be the target audience for TDM marketing efforts. Employers implement incentive programs both for their employee population as a whole and at specific worksites. They will use the commute management system to enhance implementation of their own trip reduction incentive programs.

King County Metro

King County Metro is the main public transit agency and vanpool provider for the area and primary ridematch service provider.

Washington State Department of Transportation, WSDOT

The Washington State Department of Transportation implemented the RideshareOnline.com for ride matching. There is opportunity for WSDOT and the City of Kirkland to integrate the ridematching databases.

GENERAL REQUIREMENTS FOR RFP

All proposals should contain:

- The firm's name and size

- Client list with a minimum of five (5) references
- Samples of recent work (created in the last 3 years) including site URLs
- A project timeline and estimate
- Estimates should contain fixed or hourly pricing with a not to exceed figure
-

At a minimum the response to the RFP should include the following:

- Plans/strategies for marketing/outreach to:
 - Employers (CTR affected, TMP affected and smaller employers that are not affected by CRT and TMP requirements)
 - employees
 - residents
- Implementation plan and schedule (include monthly meetings with City of Kirkland)
- A description of experience in marketing trip reduction program
- A cost estimate for the project including staff assignments and staff billing rates
- A description of how the project would be managed (progress reports, invoices, communication)
- Demonstration of familiarity with Washington State CTR law, RideshareOnline, and the City of Kirkland TDM program
- At least three (3) work references relating to commute trip reduction

PROPOSAL PREPARATION: Firms submitting proposals shall be responsible for any and all costs and/or expenses associated with preparing such proposal.

SELECTION CRITERIA

Selection will be based on the following:

Selection Criteria	Points
Quality and viability of marketing and outreach plan	20
Amount of quality of relevant experience	30
Project management skills/plan schedule	20
Familiarity with CTR law, RideshareOnline and Kirkland TDM program	10

Project Cost	20
Total	100

PROPOSAL SIZE AND EVALUATION: Proposals should be no longer than 15 double sided 8-1/2" X 11" pages and will be evaluated based on the criteria in the selection criteria section of this document. Finalists will be contacted by phone and may be required to present their concept in front of a review committee. The City reserves the right to reject any or all proposals.

*Sample***PROFESSIONAL SERVICES AGREEMENT**

The City of Kirkland, Washington, a municipal corporation (hereinafter the "City") and _____, whose address is _____ (hereinafter the "consultant"), agree and contract as follows:

I. SERVICES BY CONSULTANT

- A. The Consultant agrees to perform the services described in Attachment _____ to this Agreement, which attachment is incorporated herein by reference.
- B. All services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and completely and in accordance with professional standards of conduct and performance.

II. COMPENSATION

- A. The total compensation to be paid to Consultant for these services shall not exceed \$_____, as detailed in Attachment _____.
- B. Payment to Consultant by the City in accordance with the payment ceiling specified above shall be the total compensation for all work performed under this Agreement and supporting documents hereto as well as all subcontractors' fees and expenses, supervision, labor, supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals.
- C. The Consultant shall be paid monthly on the basis of invoices submitted. Invoicing will be on the basis of percentage complete or on the basis of time, whichever is applicable in accordance with the terms of this Agreement.
- D. The City shall have the right to withhold payment to Consultant for any work not completed in a satisfactory manner until such time as consultant modifies such work to the satisfaction of the City.
- E. Unless otherwise specified in this Agreement, any payment shall be considered timely if a warrant is mailed or is available within 45 days of the date of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

III. TERMINATION OF AGREEMENT

The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving ten (10) days notice to Consultant in writing. In the event of termination, all finished or unfinished reports, or other material prepared by the Consultant pursuant to this Agreement, shall be provided to the City. In the event the City terminates prior to completion without cause, consultant may complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on the project prior to the date of suspension or termination, not to exceed the payment ceiling set forth above.

IV. OWNERSHIP OF WORK PRODUCT

- A. Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled or produced as a result of this Agreement, whether or not completed, shall be vested in the City. Any reuse of these materials by the City for projects or purposes other than those which fall within the scope of this contract or the project to which it relates, without written concurrence by the Consultant will be at the sole risk of the City.

The City acknowledges the Consultant's plans and specifications as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the City upon completion of the work. The City agrees to hold harmless and indemnify consultant against all claims made against Consultant for damage or injury, including defense costs, arising out of any reuse of such plans and specifications by any third party without the written authorization of the Consultant.

- B. Methodology, materials, software, logic, and systems developed under this contract are the property of the consultant and the City, and may be used as either the consultant or the City sees fit, including the right to revise or publish the same without limitation.

V. GENERAL ADMINISTRATION AND MANAGEMENT

The _____ for the City of Kirkland shall review and approve the Consultant's invoices to the City under this Agreement, shall have primary responsibility for overseeing and approving services to be performed by the Consultant, and shall coordinate all communications with the Consultant from the City.

VI. COMPLETION DATE

The estimated completion date for the consultant's performance of the services specified in Section I is _____.

Consultant will diligently proceed with the work contracted for, but consultant shall not be held responsible for delays occasioned by factors beyond its control which could not reasonably have been foreseen at the time of the execution of this Agreement. If such a delay arises, Consultant shall forthwith notify the City.

VII. SUCCESSORS AND ASSIGNS

The Consultant shall not assign, transfer, convey, pledge, or otherwise dispose of this Agreement or any part of this Agreement without prior written consent of the City.

VIII. NONDISCRIMINATION

Contractor shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

IX. HOLD HARMLESS/INDEMNIFICATION

Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

X. LIABILITY INSURANCE COVERAGE

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. A failure to obtain and maintain such insurance or to file required certificates and endorsements shall be a material breach of this Agreement.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability

coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. Claims-made Coverage

Any policy of required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under the contract and filed within three (3) years following completion of the services so to be performed.

XI. COMPLIANCE WITH LAWS/BUSINESS LICENSE

The Consultant shall comply with all applicable State, Federal, and City laws, ordinances, regulations, and codes. Contractor must obtain a City of Kirkland business license or otherwise comply with Kirkland Municipal Code Chapter 7.02.

XII. FUTURE SUPPORT

The City makes no commitment and assumes no obligations for the support of Consultant activities except as set forth in this Agreement.

XIII. INDEPENDENT CONTRACTOR

Consultant is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Consultant agrees that he is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on him as a result of his status as an independent contractor. The Consultant is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance of unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of consultant.

XIV. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with all attachments and addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto.

XV. ADDITIONAL WORK

The City may desire to have the Consultant perform work or render services in connection with the project other than provided for by the express intent of this contract. Any such work or services shall be considered as additional work, supplemental to this contract. Such work may include, but shall not be limited to,

Additional work shall not proceed unless so authorized in writing by the City.

Authorized additional work will be compensated for in accordance with a written supplemental contract between the Consultant and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below:

CONSULTANT:

CITY OF KIRKLAND:

By: _____

By: _____
Kurt Triplett, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

Kirkland City Attorney

Date: _____

Attachment A**Attachment to Professional Services Agreement****Availability of Records**

All project records in support of all costs incurred and actual expenditures kept by the City of Kirkland and Consultant are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the City. Copies of said records shall be furnished to the State and/or Federal Government upon request.

Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the City of Kirkland and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The City of Kirkland shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The City of Kirkland shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The City shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the City for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in the federal Office of Management & Budget (OMB) circular A-87, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the City for that portion of State costs which were not reimbursed by the Federal Government.

1. Project Construction Costs

Project financing will be accomplished by the following method as indicated in this agreement:

Method C – The City will submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project.

Expenditures by the City maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the City for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the City/Consultant will provide documentation of all costs incurred on the project.

The State shall bill the City for all costs incurred by the State relative to the project. The State shall also bill the City for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation.

Single Audit Act

The City, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the City shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

Traffic Control, Signing, Marking, and Roadway Maintenance

The City/Consultant will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The City will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The City will, at its own expense, maintain the improvement covered by this agreement.

Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The City or Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City/Consultant shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City/Consultant of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The City hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts

(FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The City/Consultant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The City/Consultant also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order

In addition, the City/Consultant agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the City or Consultant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the City or Consultant; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.